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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

COMMISSIONERS

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JEFF HATCH-MILLER, Chairman  
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AZ Corporation Commission  
Director Of Utilities

IN THE MATTER OF THE APPLICATION OF  
LONG DISTANCE WHOLESALE CLUB FOR  
CANCELLATION OF ITS CERTIFICATE OF  
CONVENIENCE AND NECESSITY TO PROVIDE  
COMPETITIVE RESOLD INTEREXCHANGE  
TELECOMMUNICATIONS SERVICES IN THE  
STATE OF ARIZONA.

DOCKET NO. T-03164A-04-0594

DECISION NO. 67759

ORDER

Open Meeting  
April 5 and 6, 2005  
Phoenix, Arizona

**BY THE COMMISSION:**

Having considered the entire record herein and being fully advised in the premises, the Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

**FINDINGS OF FACT**

1. In Decision No. 60286 (July 2, 1997), the Commission granted to Long Distance Wholesale Club ("LDWC" or "Applicant") a Certificate of Convenience and Necessity ("CC&N") authorizing it to provide competitive resold interexchange telecommunications services in Arizona.

2. On August 11, 2004, LDWC filed an application requesting cancellation of its CC&N and withdrawal of its tariff.

3. The application stated that LDWC ceased its long distance operations during the first quarter of 2000 following the transfer of its customer base to Excel Telecommunications, Inc. ("Excel").<sup>1</sup>

4. By its application, LDWC indicated that the customer notice obligations set forth in Arizona Administrative Code ("A.A.C.") R14-2-1107 are negated based upon its lack of a subscriber base.

<sup>1</sup> By its December 3, 2004 filing, LDWC indicated that at the time of the customer migration it was a subsidiary of Excel.

1           5.       By letter dated November 24, 2004, the Commission's Utilities Division Staff  
2 ("Staff") requested additional information from LDWC relating to its application.

3           6.       On December 3, 2004, LDWC filed its response to Staff's First Set of Data Requests  
4 by which it indicated that it has been a dormant carrier with no subscriber base for more than five  
5 years. LDWC additionally indicated that its subscribers received notification in October 1999 of the  
6 migration to occur in November of 1999 as well as a second notice after completion of the transfer.

7           7.       LDWC further indicated that there are no outstanding obligations as it never collected  
8 advances, deposits or prepayments from its customers.

9           8.       By its December 3, 2004 filing, LDWC requested a waiver of the legal notice  
10 requirement set forth in A.A.C. R14-2-1107(B) given the unique circumstances of its application.

11          9.       On December 23, 2004, Staff filed its Staff Report in this matter, which recommended  
12 cancellation of LDWC's CC&N and waiver of the requirement for publication of legal notice as set  
13 forth in A.A.C. R14-2-1007(B). Staff further recommended that upon cancellation of its CC&N,  
14 LDWC no longer be subject to the requirements of Decision No. 60286.

15          10.      The Staff Report did not, however, indicate the extent to which LDWC is subject to  
16 and has satisfied, or in the alternative, should be exempt from the requirements set forth in A.A.C.  
17 R14-2-1107(A).

18          11.      A.A.C. R14-2-1107(A) requires any telecommunications company providing  
19 competitive local exchange or interexchange service on a resold or facilities-based basis that intends  
20 to discontinue service or to abandon all or a portion of its service area to file an application for  
21 authorization with the Commission setting forth the following:

22               (a) Any reasons for the proposed discontinuance of service or abandonment of service  
23 area;

24               (b) Verification that all affected customers have been notified of the proposed  
25 discontinuance or abandonment, and that all affected customers will have access to an alternative  
26 local exchange service provider or interexchange service provider;

27               (c) Where applicable, a plan for the refund of deposits collected; and

28               (d) A list of all alternative utilities providing the same or similar service within the

1 affected geographic area.

2 12. A.A.C. R14-2-1107(B) requires an applicant to publish legal notice of the application  
3 in all counties affected by the application. Under A.A.C. R14-2-1107(C), once proper notice is  
4 effected and if no objection is filed, the Commission may grant the application without a hearing.

5 13. LDWC's application to cancel its CC&N and discontinue resold interexchange service  
6 was filed on August 11, 2004, more than five years after LDWC ceased providing service to its  
7 Arizona customers in November 1999.

8 14. If, however, LDWC had applied to cancel its CC&N to provide resold interexchange  
9 service at the time it ceased providing that service to its Arizona customers, A.A.C. R14-2-1107  
10 would not have been applicable.<sup>2</sup>

11 15. Mandating compliance with the current provisions of A.A.C. R14-2-1107 would,  
12 therefore, provide retroactive protection to a class of customers not otherwise protected by the rules  
13 as they existed at the time LDWC discontinued the provision of resold interexchange service. The  
14 requirements of A.A.C. R14-2-1107 should, therefore, be waived based upon the unique  
15 circumstances of this case.

16 16. Staff indicated that there are no open complaints, inquiries or opinions concerning  
17 LDWC.

18 17. Numerous other carriers in Arizona offer services similar to those that LDWC is  
19 currently certificated to provide.

20 18. No Arizona customers will be affected by the requested cancellation.

#### 21 CONCLUSIONS OF LAW

22 1. Applicant is a public service corporation within the meaning of Article XV of the  
23 Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

24 2. A.A.C. R14-2-1107 applies to any telecommunications company providing  
25 competitive service that intends to discontinue service or to abandon all or a portion of its service  
26 area.

27  
28 <sup>2</sup> Prior to April 26, 2004, A.A.C. R14-2-1107 applied solely to providers of local exchange telecommunications services.

2. The Commission has jurisdiction over Applicant and the subject matter of the application.

3. The cancellation of Applicant's CC&N is in the public interest.

4. The requirements of A.A.C. R14-2-1107 should be waived based upon the unique circumstances of this case.

### ORDER

IT IS THEREFORE ORDERED that the Certificate of Convenience and Necessity granted to Long Distance Wholesale Club in Decision No. 60286 is hereby cancelled.

IT IS FURTHER ORDERED that Long Distance Wholesale Club's tariffs are hereby cancelled.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

  
CHAIRMAN

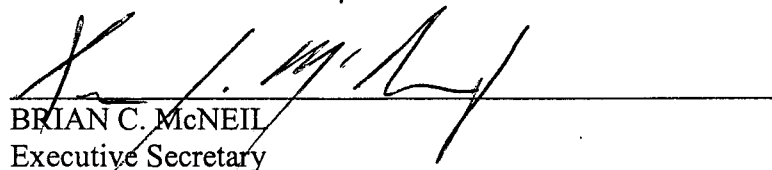
  
COMMISSIONER

  
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COMMISSIONER

IN WITNESS WHEREOF, I BRIAN C. McNEIL, Executive Secretary of the Arizona Corporation Commission, have hereunto, set my hand and caused the official seal of this Commission to be affixed at the Capitol, in the City of Phoenix, this 11<sup>th</sup> day of April, 2005.

  
BRIAN C. McNEIL  
Executive Secretary

DISSENT: \_\_\_\_\_

DISSENT: \_\_\_\_\_

AP: mj

SERVICE LIST FOR: LONG DISTANCE WHOLESALE CLUB

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